

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE ESTATE OF NENA CHARLEY,
by and through Personal Representative,
TIMOTHY CHARLEY, TIMOTHY
CHARLEY, as parent and next friend of
NILE CHARLEY, and TIMOTHY CHARLEY,
Individually,

Plaintiffs,

vs.

Cause No. 1:22-cv-00033-JB-JFR

THE UNITED STATES OF AMERICA, ROBIN
RANEL SALES, R.N., JOELLE CATHERIN
CERO GO, R.N., AB STAFFING SOLUTIONS,
LLC, a Foreign Corporation, NEXT MEDICAL
STAFFING, a Foreign Corporation, and JOHN or
JANE DOE Corporation.

Defendants.

**DEFENDANT UNITED STATES' MOTION FOR PROTECTIVE ORDER
REGARDING THE DEPOSITION OF DR. ERIC KETCHAM**

COMES NOW the United States pursuant to Fed. R. Civ. P. 26(c)(1) and 30(a)(2)(A)(i), and D.N.M. LR-Civ. 30.2, and respectfully moves the Court to issue a protective order precluding Plaintiffs from taking the deposition of Defendant United States' expert witness, Dr. Eric Ketcham. The United States' Notice of Non-Appearance for Dr. Eric Ketcham's deposition was filed concurrently with this Motion.

Pursuant to Rule 26(c)(1), the United States certifies it attempted to resolve this matter without court action. Plaintiffs submitted the deposition notice of Dr. Eric Ketcham on September 6, 2023. *See* Deposition Notice attached as **Exhibit A**. On September 7, 2023, after receiving the deposition notice for Dr. Ketcham, the United States informed Plaintiffs that they had used their ten allotted depositions and asked that Plaintiff withdraw the deposition notice. *See* Email

communication between counsel, attached as **Exhibit B**. Additionally, the parties met and conferred on September 19, 2023, to discuss, in part, vacating Dr. Ketcham's deposition. Plaintiffs, however, have refused to vacate the deposition, making this Motion necessary. The United States certifies they sought the parties' concurrence regarding this motion pursuant to D.N.M. LR-Civ. 7.1 and Federal Rule of Civil Procedure 26(c)(1). Plaintiffs oppose the Motion. Defendants Joelle Catherin Cero Go, R.N. and AB Staffing Solutions, LLC do not oppose.

Plaintiffs have already taken their ten allotted depositions in this case. *See* Doc. 166. Plaintiffs must obtain leave from this Court to take any additional depositions. Fed. R. Civ. P. 30(a)(2)(A)(i). "This provision has two objectives. First, it assures judicial review under the standards of Rule 26(b)(2) for depositions in excess of ten." *Mackey v. Staples the Office Superstore LLC*, 2010 WL 9523829, at *5 (D.N.M. Feb. 12, 2010) (relying upon Fed. R. Civ. P. 30 advisory committee note to 1993 Amendment). "Second, it emphasizes that counsel have a professional obligation to develop a cost-effective discovery plan. *Id.* Leave to take additional depositions should be granted only when consistent with the principles of Rule 26(b)(2)." *Id.* "Because this limit is intended to curb abusive discovery practices, it stands to reason that a party wishing to conduct more than 10 depositions has the burden of persuading the court that these additional depositions are necessary." *Talismanic Properties, LLC v. Tipp City, Ohio*, 309 F. Supp. 3d 488, 497 (S.D. Ohio 2017).

Plaintiffs set Dr. Ketcham's deposition prior to requesting leave from the Court to take his deposition and prior to the Court granting leave to take his deposition. Dr. Ketcham's deposition notice was submitted on September 6, 2023. Ex. A. At that time Plaintiff had already taken ten depositions and had not sought leave to take Dr. Ketcham's deposition, or the deposition of any expert witness. *See* Doc. 161 (Plaintiffs' Motion seeking additional depositions failed to request

leave of the Court to depose Dr. Ketcham or any other expert). By setting Dr. Ketcham's deposition without leave, Plaintiffs violated Fed. R. Civ. P. 30(a)(2)(A)(i). Plaintiffs were not authorized to set Dr. Ketcham's deposition, and the United States objected to it and asked that it be withdrawn. Plaintiffs, however, refused to withdraw the notice. As a result, the United States respectfully asks the Court to enter a protective order pursuant to Rule 26(c)(1) to prevent Plaintiff's from taking Dr. Ketcham's deposition on October 19, 2023.

Respectfully submitted,

ALEXANDER M.M. UBALLEZ
United States Attorney

/s/ Brett C. Eaton 9/27/23
Brett C. Eaton
Assistant United States Attorney
P.O. Box 607
Albuquerque, NM 87103
(505) 346-7274; Fax: (505) 346-7205
brett.eaton@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 27, 2023, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Brett C. Eaton 9/27/23
Brett C. Eaton
Assistant U.S. Attorney